Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

vs.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,

Defendants.

BRIEF OF THE ATTORNEY GENERAL OF NEW JERSEY AS *AMICUS CURIAE*

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Interest of *Amicus Curiae*

On or about March 30, 1970, the Commonwealth of Pennsylvania filed a Motion for Leave to File Complaint in the above Original Action, together with a copy of the Proposed Complaint, seeking to escheat money received by Western Union Telegraph Company for the trans-

mission of telegraphic money orders which for one reason or another were not delivered. Leave to file this complaint was granted on June 15, 1970. The Attorney General of New Jersey has reviewed this matter and has determined that the issues presented have such a potential impact on the State of New Jersey that New Jersey should participate in this litigation. In accordance with the Report of the Special Master on the Applications of the States of California, Arizona, and Indiana for leave to intervene, the Attorney General of New Jersey has determined that New Jersey's views should be presented as *amicus curiae* rather than by intervention.

Western Union Telegraph Company is a New York corporation which is, and was during the years 1943 to 1962 inclusive, authorized to do business in the State of New Jersey. Of the estimated $1,500,000 which is allegedly still held by Western Union on account of money orders purchased from said company on or before December 31, 1962, based on a projection of the figures obtained by Western Union during its 1966 survey, it appears that approximately $45,000 is held on account of money orders purchased from Western Union in New Jersey. A rule enabling the state of domicile of Western Union to escheat these unclaimed funds would deprive New Jersey of funds which are subject to escheat or custodial taking under the provisions of its laws. N.J.S.A. 2A:37-13 provides for the absolute escheat of property which has been unclaimed for 14 successive years. As an alternate method, N.J.S.A. 2A:37-30 provides for the custodial taking by the State Treasurer of personal property which has remained unclaimed for a period of 5 successive years.

ARGUMENT

In order to ensure an equitable distribution of abandoned intangibles, this Court should adopt the rule that the State of Origin of a telegraphic money order, as shown by Western Union's records, is the State entitled to the escheat or custody of unclaimed moneys arising from a money order.

The case of *Texas* v. *New Jersey,* 379 U. S. 674 (1965) established the rule that abandoned intangibles are subject to escheat or custodial taking by the State of the creditor's last known address as shown by the debtor's books and records. It is clear that the purchase of a telegraphic money order involves a debtor-creditor relationship. *Western Union Telegraph Co.* v. *Pennsylvania,* 368 U. S. 71 (1961); *New Jersey* v. *Western Union Telegraph Co.,* 17 N. J. 149, 110 A. 2d 115 (1964). However, due to the multi-stages of a telegraphic money order transaction and the fact that different states rely on different phases of the telegraphic money order transaction in determining who is the creditor, an individual state cannot ascertain the identity of the creditor of Western Union and therefore cannot escheat these monies in accordance with the *Texas* rule. In order to implement the *Texas* decision the Court must now adopt a rule which will enable the creditor to be identified.

New York urges the Court to apply to this controversy the *Texas* rule that the state of incorporation of the debtor is entitled to escheat or take into custody property owed persons as to whom there is no record of any address. However, whereas in the *Texas* case the debts consisted of money owed to creditors whose names were known, but whose last known address may or may not have

been listed on the records of the debtor corporation, in the case of abandoned intangibles arising from a telegraphic money order transaction, the creditor's identity, as well as his last address, is unknown. Rather than urging the Court to adopt a rule which would enable the creditor of a telegraphic money order to be identified, New York contends that since the identity of the creditor is unknown, his last known address is unknown and therefore, New York, as the state of incorporation of Western Union, is the state entitled to escheat or take into protective custody these intangibles. Acceptance of such a contention would permit New York to receive a windfall of approximately $1,500,000 simply because Western Union hapens to be incorporated there, and would deprive all the states involved in the telegraphic money order transaction of the benefits of the commercial transactions which took place in such states. Such a result would be contrary to the spirit of the *Texas* decision where the Court pointed out "that in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself." *Texas* v. *New Jersey, supra* at 680.

The State of New Jersey submits that the rule adopted for the escheat of these unclaimed funds should be an equitable one which would enable the many states involved in the commercial transactions of Western Union which gave rise to the unclaimed funds to share in these funds. *Texas* v. *New Jersey, supra* at 681. *See,* Note, *The Supreme Court, 1964 Term,* 79 Harv. L. Rev. 103, 204 (1965); *Conflict of Laws: Escheat of Intangible Property and Competing State Claims,* 65 Colum. L. Rev. 1100 (1965). The State of New Jersey therefore takes the position that

the rule advanced by the Commonwealth of Pennsylvania —that the state in which telegraphic money orders have been purchased from Western Union is the state entitled to the escheat or custody of the unclaimed funds held by Western Union on account of such telegraphic money orders—is fair and equitable. The state of origin is the state most intimately connected with the telegraphic money order transaction as it is the state where the money order is purchased and where the contract between the sender and Western Union is executed. In addition, payment for Western Union's service is made in the state of origin and the monies deposited with Western Union are not sent out of that state, but are mingled there with other funds of the company.

The state of origin rule is also advantageous from an administrative point of view. While Western Union's records generally provide information as to the names and addresses of the sender and sendee of a telegraphic money order, in all cases the records reveal the place of purchase. The place of origin can be readily obtained from Western Union's records without the necessity of attempting to ascertain the place of destination, the address of the sendee named in the money order, or the address of the payee of a draft issued in payment of a money order.

CONCLUSION

For the reasons set forth above and in the brief of the plaintiff, it is respectfully submitted that the Court should declare that the state of origin of a telegraphic money order, as shown by Western Union's records, is, to the extent of that state's power under its own laws to escheat or to take custodially, the only state entitled to the escheat or custody of unclaimed moneys arising from the money orders.

Respectfully submitted,

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

BRIEF OF STATE OF CALIFORNIA AND MOTION FOR LEAVE TO JOIN IN THE COMPLAINT OF THE COMMONWEALTH OF PENNSYLVANIA

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BRIEF OF STATE OF CALIFORNIA

It would serve no useful purpose to set forth all of the material that appears in the brief of the Commonwealth of Pennsylvania and the State of California, with the addition of the language which appears below adopts the brief of Pennsylvania.

THE RULE URGED BY PENNSYLVANIA IS FAIR AND EASY OF APPLICATION

The basis for the decision in *Texas* v. *New Jersey*, 379 U.S. 674, is found in the following language:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run

will be the most generally acceptable to all the States." 379 U.S. 674, 683.

The rule adopted as being the fairest way of distributing abandoned property to which several states had claims was to make a distribution to the states in proportion to the commercial activities of their residence. The rule urged by the State of Pennsylvania which proposes that unclaimed telegraphic money orders be escheated to the state in which the orders originated will carry out the intent expressed in *Texas* v. *New Jersey* both as to fairness and ease of administration. California has by statute (California Code of Civil Procedure section 1511) adopted such a rule in California joins with Pennsylvania in asking that unclaimed money orders should properly be escheated to the state in which they had their origin.

We believe that it does not require evidence to support the proposition that the normal place of purchase of money orders is at or near the home of the purchaser or sender. Courts and judges need not rid themselves of common sense and knowledge of the habits of humanity in deciding matters before them. If it is accepted that money orders are normally purchased in the state of residence adoption of the rule contended for by Pennsylvania seems inevitable.

To apply a literal interpretation of *Texas* v. *New Jersey*, *supra*, so as to permit the escheat of money orders where the address of the sender is unknown to the state of corporate domicile would be in complete and total defiance with the spirit of that decision, that

is, that a rule of fairness and ease of administration should prevail. It seemingly is conceded by all parties that the state of residence of the owners of the claims against the telegraph company is the proper state to escheat these items. The only point of similarity between the telegraphic money orders involved here and the unclaimed dividends that were the subject of *Texas* v. *New Jersey* is that in both cases the addresses of the owners are unknown. In *Texas* v. *New Jersey* the court in stating that the corporate domicile should be the proper state to escheat property belonging to persons whose addresses were unknown was faced with a practical problem: What should be done with such property? No one of the contending states could by means of evidence, presumptions or otherwise establish that it, rather than another, was the state of residence of any individual whose address was not found in the records of the company. Adoption of the rule that property owed to persons as to whom there was no address at all should go to the state of corporate domicile was pronounced simply because there was no reasonable alternative. As to money orders there is a reasonable alternative: Escheat to the state in which the money order originated. Such a distribution is not only a reasonable alternative but it would seem to be the only reasonable method if the underlying spirit of *Texas* v. *New Jersey* is to govern and unclaimed property is to be distributed among the states in proportion to the commercial activities of their residents.

It is not necessary to argue the applicability of the California statutory provision in a law suit involving several states, each of which can urge claims based on its own law to the sums involved. It is submitted, however, that the California presumption is a reasonable one and it does embody a rule, which aside from its effect as a law of California, makes for a fair division of the unclaimed money orders involved here.

Respectfully submitted

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Defendants

MOTION OF THE STATE OF CALIFORNIA FOR LEAVE TO JOIN IN THE COMPLAINT OF THE COMMONWEALTH OF PENNSYLVANIA

The State of California respectfully represents that the above cause is now pending in this Court before the Honorable John F. Davis, Esquire, Special Master; that several States, including the State of California, have been granted leave to intervene herein as parties plaintiff and defendant respectively; that the allegations and averments of the Commonwealth of Pennsylvania in her complaint, including the prayers thereof, are those which California proposes to advance with the sole exception of amounts, identity of escheator, and applicable statutory law; and that as to paragraphs 19 and 21 of Pennsylvania's Complaint, the State of California alleges and avers:

19. Of the said sum, at the least $100,000 is held by Western Union on account of money orders purchased from it in California.

* * * * *

21. The said sum of at least $100,000 is subject to escheat or custodial taking by the State of California under the provisions of its laws (California Code of Civil Procedure sections 1500 et seq.) to the extent, if any, that the statutory provisions mentioned are ineffective the moneys here claimed were in any event escheatable to the State of California by virtue of her statutory and common laws.

WHEREFORE, plaintiff, the State of California prays:

1. That the Complaint of the Commonwealth of Pennsylvania stand as the Complaint of the State of California, with the exceptions noted above, and that the Court's Special Master enter an order to that effect.

3. That the plaintiff, the State of California, have such other and further relief as to this Court may appear just.

Respectfully submitted,

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STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON, COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

INTERVENING COMPLAINT OF THE STATE OF CONNECTICUT

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INTERVENING COMPLAINT OF THE STATE OF CONNECTICUT

The State of Connecticut, intervenor-plaintiff, by Robert K. Killian, its Attorney General, brings this original action against the State of New York, the State of Florida, the State of Oregon, the Commonwealth of Virginia, and The Western Union Telegraph Company, defendants, and alleges as follows:

1. The plaintiff, the Commonwealth of Pennsylvania, the intervenor-plaintiff, the State of Connecticut, and the defendants, the State of New York, the State of Florida, the State of Oregon, and the Commonwealth of Virginia are States of the United States.

2. The defendant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 60 Hudson Street, New York, New York.

3. This is a civil controversy (a) between two or more States of the United States, and (b) between Western Union and States other than its State of incorporation, and is, therefore, within the original jurisdiction of the Supreme Court of the United States, under Article III, Section 2 of the Constitution of the United States, and of the United States Code, Title 28, Section 1251(a)(1) and (b)(3).

4. Western Union is joined as a party defendant because the subject-matter in controversy consists of moneys received by the company for telegraphic money orders, and the judgment prayed for will necessarily include an order directing the company to pay the amounts so received, or a portion or portions thereof, to one or more of the States named herein as parties, or to a State or States not named as parties.

5. New York, Florida, Oregon and Virginia are the only States named as defendants herein, because they are the only States which, according to intervenor-plaintiff's knowledge, are asserting rights which may be contrary to the claims of Connecticut.

6. Western Union is, and was during the period here involved, authorized to do business in most of the States of the United States and in the District of Columbia, and, prior to divestment of its international operations on September 20, 1963, it was also authorized to do business in certain foreign countries.

On or about October 7, 1943, Western Union merged with Postal-Telegraph, Inc. and operating and sales subsidiary companies, and, in so merging, Western Union assumed the obligations of Postal-Telegraph, Inc. and subsidiary companies. To the extent telegraphic money orders of the predecessor companies resulted in obligations which were assumed by Western Union and are involved in this action, such telegraphic money orders are herein treated as if they were originally Western Union telegraphic money orders.

7. In addition to its telegraphic message service, Western Union carries on a telegraphic money order service, receiving money from a purchaser of a telegraphic money order at one place for payment of the amount so received to a named person at another place. Telegraphic money orders are hereinafter referred to as "money orders" or "money order".

8. The company uses the term "sender" to designate the purchaser of a money order.

The term "sendee" is used hereinafter to designate the person to whom the money order directs the money to be paid.

The term "State of origin" or the term "place of origin" is used hereinafter to designate the State or place where the money order is purchased from Western Union and where is received from the sender the amount to be paid to the sendee.

The term "State of destination" or the term "place of destination" is used hereinafter to designate the State or place in which the money order directs the money to be paid to the sendee.

9. The procedure observed by Western Union in its telegraphic money order service is as follows:

a. The sender fills out a money order form at a Western Union sending office in the State or place of origin and gives it to the company's clerk, together with the money to be sent and the company's charges for sending it.

All of the terms and conditions set forth in the money order are part of Western Union's tariffs on file with I.C.C., and also when required by the laws of any State, are part of Western Union's tariffs on file with the regulatory body of such State.

The form has blank spaces to be filled in by the sender, showing the amount to be sent, the name and address of the sendee, and the sender's name and address. In most cases the sender fills in the blanks, but in many cases he fails to fill in the space for his address. The clerk fills in the blanks showing the address of the office of origin, the date and hour the money order is purchased, and the company's charges.

The money order states that it is subject to the conditions printed on the face and back thereof. One of the conditions on the back is the following:

"Domestic money orders will be cancelled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office . . ."

As to other money orders, the period fixed in the money order is 5 days or 10 days.

b. A receipt is given to the sender.

c. The company's clerk at the office of origin then sends a telegraphic inter-office message to its paying office nearest the sendee's address shown in the money order, directing the paying office to pay the money to the sendee.

The money received at the sending office for the money order is not sent to the paying office, but remains at the sending office and is intermingled with moneys collected there for telegrams and other receipts. The intermingled moneys are used for the purpose of paying any incoming money orders and other authorized expenditures of the sending office. Accumulation of surplus cash, if any, is deposited in a local bank account in the name of Western Union. Accumulation of excess funds, if any, in the local bank account is remitted to a Divisional Headquarters Cashier, who, in turn, remits to the company Treasurer.

d. In most cases, the sendee is notified by the paying office that a telegraphic money order has been received for the payment of money to him, and to call at the paying office, the address of which is given, to receive the money.

In some cases, where the sendee is otherwise aware of the money order, notice may not be sent to him. In some cases the company attempts to give such notice, but is unsuccessful in the attempt.

e. Upon identifying himself at the paying office, the sendee is given a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future use.

In some instances, the sendee does not call for the draft, but, by request of the sender or sendee, it is sent to the sendee.

f. If the sendee cannot be located, or if, after notice, he fails to call for the draft, or if, for any other reason, the company is unable to issue a draft to the sendee, then, after 72 hours (or other period specified by the conditions of the money order), the money order is cancelled by the paying office notifying the sending office that payment has not been effected, and, under the conditions printed on the money order, refund to the sender is required. Once the money order is canceled because of the expiration of the specified period, the company will not later issue a draft to the sendee or otherwise recognize any right in the sendee under the money order.

g. The sending office then notifies the sender that payment to the sendee could not be effected, and that the company will make refund to the sender.

h. The sender may present himself at the sending office and receive a negotiable company draft, which he may endorse and cash immediately at the company's office, or keep for future use.

In some instances, the sender does not call for the draft, but at the sender's request, it is sent to him.

If the sender cashes the draft, it is paid from moneys collected at the sending office for telegrams, money orders and other receipts, and the clerk at that office takes credit for the amount so paid to the sender. In the event that this amount is not sufficient, the manager draws the amount necessary from the local bank account, and in turn, if that account is not sufficient, the manager receives a check from the divisional headquarters cashier to meet such deficit.

i. Where the company has issued a draft, either to the sendee for the amount of the money order, or to the sender for the refund, and the draft is not immediately cashed, the Company holds the amount to be paid until the draft is presented by the payee or his transferee, and, upon such presentation, pays the amount of the draft.

10. Usually, the purpose of the money order has been accomplished; the sendee has received a draft and has cashed it.

11. In those instances in which the sendee has received a draft, but the draft has not been presented for payment, Western Union presently holds the moneys, awaiting presentation of the draft.

12. In those instances in which Western Union has been unable to deliver a draft to the sendee, the company has canceled the money order, and where it has been able to do so, has made refund to the sender.

13. Usually, the refund has been accomplished; the sender has received a draft for the refund and has cashed it.

14. In those instances in which the sender has received a draft for the refund, but the draft has not been presented for payment, Western Union presently holds the money, awaiting presentation of the draft.

15. In those instances in which the money order has been canceled, but Western Union has been unable to deliver a draft to the sender for the refund, Western Union presently holds the money awaiting the sender's request for the refund.

16. In 1966, at the suggestion of New York and Pennsylvania, Western Union made a survey of more than

17,000 money orders purchased in 1943, 1948, 1953 and 1958, as to which Western Union still held the money received by it for money orders, such four years, at five year intervals, being chosen as sampling periods.

The said survey showed that as to 78.1% of the aggregate amount of the money orders examined, the company had not been able to effect payment and the money orders had been canceled, but that the company had not been able to make refund to the senders or to deliver drafts to them.

As to the other 21.9% of the amount of the money orders examined, drafts had been issued either to sendees or to senders. The survey did not show what portion of the 21.9% represented money orders as to which drafts had been delivered to the sendees, and what portion represented money orders as to which drafts had not been delivered to the sendees, but to the senders for refunds.

17. The present proceeding relates to moneys presently held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

18. In excess of $1,500,000.00 is still held by Western Union on account of money orders purchased from the company on or before December 31, 1962.

19. On information and belief, of the said sum, approximately $100,000.00 is held by Western Union on account of money orders purchased from it in Connecticut.

20. The said sum of approximately $100,000.00 has been unclaimed for more than seven years by the persons thereto entitled.

21. On information and belief, the said sum of $100,000.00 is subject to escheat or custodial taking by the

State of Connecticut under the provisions of its laws. (Conn. Gen. Stats., § 3-56a, et seq.).

22. In an action instituted in 1953 by the Commonwealth of Pennsylvania against Western Union, and affirmed in Gottlieb, Escheator v. Western Union Telegraph Company, 400 Pa. 337, it was held that Pennsylvania, as the State of origin of money orders as to which moneys held by Western Union were unclaimed for seven years, was entitled to the escheat or custody of such moneys. Upon appeal to the U. S. Supreme Court, the judgment of the Pennsylvania Court was reversed in Western Union Telegraph Company v. Pa., 368 U.S. 71, because of the potential claims of other States to the same intangibles, and because the Pennsylvania judgment could not protect Western Union from such potential claims of other States.

23. The intervenor-plaintiff is informed that Florida asserts that under its laws, it is entitled to the custody of such money if Florida was the state of destination of the money orders. As to money orders of which Connecticut was the State of origin and Florida was the State of destination, there is a controversy between Connecticut and Florida.

24. The intervenor-plaintiff is informed that Oregon asserts that under its laws, the sendee of a money order is the donee beneficiary or creditor beneficiary of the money order even though no drafts were issued, and that as to money orders to a sendee in Oregon, it is the State entitled to the custody of such moneys. As to money orders of which Connecticut was the State of origin and Oregon was the State of destination, there is, therefore, a controversy between Connecticut and Oregon.

25. The intervenor-plaintiff is informed that Virginia claims that where a draft was issued to a sendee in Virginia, that State is entitled to the custody of such moneys. As to

money orders of which Connecticut was the State of origin, and drafts were issued to sendees in Virginia, there is, therefore, a controversy between Connecticut and Virginia.

26. The intervenor-plaintiff is informed that under the New York Abandoned Property Law, Sec. 1309, as amended in 1969, New York claims all moneys arising from money orders purchased from January 1, 1930 to January 1, 1958, without reference to any fact other than the purchase of the money order during such period. Neither the State of origin, the State of destination, nor the State in which a draft was issued, is recognized by New York as having any claim to such moneys. Under the said statute, New York also claims as to money orders purchased from Western Union on or after January 1, 1958, (a) where the last known address of the purchaser is in New York, whether or not a draft has been issued; (b) where no address is shown on the records of Western Union and a draft was issued in New York; and (c) if no address is shown on the records of Western Union and no draft was issued.

By reason of New York's claim as to money orders purchased before January 1, 1958, there is, therefore, a controversy between New York and Connecticut as to money orders purchased in Connecticut.

By reason of New York's claim as to money orders purchased on or after January 1, 1958, in those cases where the address of the purchaser is not shown on Western Union's records, but the State of origin is shown on such records as being in Connecticut, there is a controversy between New York and Connecticut.

27. Western Union's books and records show the State or place of origin of every money order, as well as the State or place of destination of every money order. In many cases,

its books and records do not show the address of the sender; likewise, in many cases, its books and records do not show the address of the sendee; and in many cases, its books and records do not show the address of the payee of the draft issued by the Company.

28. No judgment of a Connecticut Court could be binding upon any other claimant State unless such other State were a party to the proceeding in the Connecticut court, and a Connecticut court cannot make any other State a party, without the consent of the latter State. If Connecticut were to intervene in a proceeding in a court of another State and obtain judgment, such judgment would not bind any other claimant States which did not intervene.

If actions were brought in the various States against Western Union for the same moneys, the decisions of their courts, under their respective laws and conflicts of law rules, might be inconsistent.

29. As to 78.1% of the sum of approximately $100,000.00 held by Western Union arising out of money orders of which Connecticut was the State of origin and as to which no drafts were issued, then Connecticut, the State of origin, claims such amounts, and the controversy is, therefore, between three states, (1) Connecticut as the State of origin, (2) the State of destination, if other than Connecticut, and (3) the State of New York, in which Western Union was incorporated.

As to the 21.9%

(1) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of origin of the money orders for the said 21.9% is entitled to such moneys, then, Connecticut is entitled to such 21.9% of the $100,000.00;

(2) if it be determined by this Court that issuance of a draft does not constitute payment of a money order or refund, but that the State of destination of the money orders is entitled to such moneys, then, conversely, where it was the State of destination, Connecticut is entitled.

30. If it be determined by this Court that the State of destination rather than the State of origin is the State entitled to the escheat or custody of the unclaimed moneys held by Western Union, then Connecticut would not be entitled to any part of the said sum of $100,000.00, except where it was both the State of origin and the State of destination. However, under such a ruling, Connecticut would be entitled as the State of destination as to unclaimed moneys arising from money orders destined to Connecticut.

31. If it be determined by this Court that issuance of a draft constitutes absolute or conditional payment of a money order or a refund, then as to drafts issued to sendees or senders in Connecticut, Connecticut is entitled to the moneys held by Western Union for payment of the drafts.

32. Only by a judgment of this Court can it be determined which of the various States are entitled to the moneys held by Western Union, as above set forth.

33. Neither the intervenor-plaintiff, Connecticut, nor the defendant, Western Union, can be protected from irreparable injury and loss of property unless this Court grants the relief sought by this Complaint.

34. The plaintiff has no adequate remedy at law, and no remedy whatsoever in any other Court.

Wherefore, the plaintiff prays:

(1) That this Court take jurisdiction of the parties and subject matter herein;

(2) That this Court hear and determine the controversies herein, either by referring this case to a Special Master or Federal District Court to take evidence and make appropriate reports, or in such other manner as the Court deems fit;

(3) That a temporary injunction be issued restraining the defendant, the State of New York, and other States named as defendants herein from proceeding with any action now pending, or from instituting any action hereafter, to escheat and/or take custody of said property, pending further orders of this Court;

(4) That a temporary injunction be issued restraining the defendant, The Western Union Telegraph Company, from paying, delivering, or in any manner relinquishing, the said property to the defendant, the State of New York, or to any other State, pending further orders of this Court;

(5) That judgment be entered that the moneys held by Western Union are subject to the escheat or custody of one or more of the following States:

(a) The *State of origin* of the money orders, as shown by the books and records of Western Union;

(b) The *State of destination* of the money orders, as shown by the books and records of Western Union;

(c) The *State in which a draft has been issued* for the amount of the money order or the amount of the refund, as shown by the books and records of Western Union;

(d) The *State of last known address of the sender* of a money order, as shown by the books and records of Western Union;

(e) The *State of last known address of the sendee* of a money order, as shown by the books and records of Western Union;

(f) The *State of the last known address of the payee* of a draft, as shown by the books and records of Western Union;

(g) The *State of domicile of Western Union;*

(h) Any other State as to which the facts adduced established such right.

(6) That such judgment decree that no State other than the State or States designated under (5) above has the power of escheat or custody of, or the right to prosecute a claim of escheat or custody against, such property.

(7) That the intervenor-plaintiff, the State of Connecticut, have such other and further relief as this Court may deem just.

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30 Trinity Street
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April, 1971

IN THE

Supreme Court of the United States

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA, and INDIANA,

Intervening Plaintiffs,

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and the WESTERN UNION TELEGRAPH COMPANY,

Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

REPORT OF JOHN F. DAVIS, SPECIAL MASTER

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

HISTORY OF THIS PROCEEDING

This case involves a dispute between the States as to which has the right to escheat, or take custody of, unclaimed monies which were originally paid to the Western Union Telegraph Company for transmission by wire, and which could neither be delivered according to instructions nor returned to the senders.

The suit was instituted by Pennsylvania by the filing on March 13, 1970, of a motion for leave to file a complaint against New York, Florida, Oregon, Virginia and Western Union. Specifically, Pennsylvania's complaint alleged that on or before December 31, 1962, approximately $1,500,000.00 of telegraphic money orders for which payment had been made to Western Union were not paid to the intended recipients nor returned to the senders and, of that amount, approximately $100,000.00 originated in Pennsylvania offices of Western Union.[1] Pennsylvania asserted the right under its statute governing the disposition of property unclaimed for seven years to escheat, or take custody of, that $100,000.00, but complained that conflicting claims were being made by the other States named as defendants. Pennsylvania asked for a judgment as to which State has the right to take the unclaimed funds and for a temporary injunction against the payment of the funds by Western Union or the taking of them by the defendants, pending the disposition of the case.

The motion for leave to file the complaint was granted on June 15, 1970 (398 U.S. 956), and the defendants were

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[1] Before its merger with Western Union in 1943, Postal Telegraph, Inc., a Delaware Corporation, had offered a telegraphic money order service similar to Western Union's. Western Union inherited Postal's obligations under those contracts. None of the parties question that unpaid orders issued by Postal stand in the same posture as those sold by Western Union itself. In this report no attempt will be made to distinguish those transactions and references to Western Union orders may be taken as including Postal Telegraph orders.

given 60 days to answer. All of the defendants filed answers[2] and the state of Connecticut on August 6, 1970, filed a motion to intervene as a party plaintiff. That motion was granted on October 12, 1970, and the court further appointed the undersigned Special Master in the proceedings (400 U.S. 811).[3]

Thereafter, the States of California and Indiana filed motions to intervene as plaintiffs and Arizona moved to intervene as a defendant. By orders of November 23, 1970, and January 25, 1971 (400 U.S. 924, 1019), the Court referred these motions to the Special Master. In a report

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[2]New York has represented that no payments would be sued for pending the disposition of this case (New York Answer, page 4). The Court has taken no action on the plea for an injunction. On the final disposition of the matter there would appear to be no need for injunctive relief thereafter and the Special Master recommends that no action on the plea for an injunction is necessary. If this Court believes that disposition of the request is necessary to tidy things up, the Special Master recommends that the injunction be denied as unnecessary.

[3]The order appointing the Special Master provided as follows:

> It is hereby ordered that John F. Davis, Esquire, of Washington, D.C., be and he is hereby, appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The master is directed to submit such reports as he may deem appropriate.
>
> The compensation of the Special Master, the allowances to him, the compensation paid to his technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court hereafter may direct.
>
> It is further ordered that if the position of Special Master in this case becomes vacant during a recess of Court, the Chief Justice shall have the authority to make a new designation which shall have the same effect as if originally made by the Court herein.

filed in February, 1971, the Special Master recommended that these motions be granted and the Court so ordered on March 1, 1971 (401 U.S. 931).[4]

At the request of the Special Master, the parties met in Washington, D.C. on November 12, 1970, to chart the course of the proceedings. It was agreed that an attempt would be made to arrive at a stipulation of agreed facts in order to obviate the necessity of taking evidence. Thereafter, various of the parties met without the presence of the Special Master and all agreed to a statement of facts of 28 pages and 27 exhibits, it being understood that such agreement did not concede the relevance or materiality of the facts recited nor limit any of the parties with respect to the offer of additional evidence.

With the permission of the Special Master, the American Express Company attended the November conference and represented orally that its problems with respect to uncashed travelers checks raised common questions with the issues before the Special Master. American Express suggested that a single rule, which would apply to it as well as to Western Union telegraph money orders, was desirable. The Special Master stated that he thought that American Express could not ask for answers to its peculiar problems in the case before him, except insofar as the rules applicable to telegraphic money orders would, by implication, apply to travelers checks. However, he stated that he thought it appropriate to consider the American Express travelers checks and any other similar instruments, insofar as the disposition of unclaimed funds from such transactions shed light on a proper disposition of unclaimed funds arising from Western Union telegraphic money orders. The Special Master stated that if American Express wanted its factual situation and its legal arguments to be considered, it should submit such matters as *amicus curiae* either with the consent of all

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[4]On May 3, 1971, New Jersey filed a *brief amicus* supporting the position of Pennsylvania.

of the parties, if they should all agree, or on motion, if any party objected. New York thereafter refused to consent and American Express filed a motion for leave to file a statement and brief as *amicus curiae*. This motion also was opposed by New York. The Special Master now grants the motion of American Express for leave to file its statement and brief with him as *amicus curiae* and will consider the factual statement and the brief insofar as they may have any bearing on the issues before him.

Pursuant to a schedule proposed by the Special Master, the parties have submitted briefs and, on June 22, 1971, convened in the District of Columbia for oral argument. A complete set of the briefs filed with the Special Master and a copy of the transcript of the oral argument is being lodged with the Clerk of the Court in order that he may preserve them with the records of the case if he so desires. The records of the Court seem an appropriate place for the retention of these documents for further reference. The Special Master has no continuing commitment to the case and it might prove inconvenient to all concerned to rely upon his files.

At the commencement of the session convened before the Special Master to hear oral argument, Pennsylvania suggested that the stipulation of facts be supplemented with additional data which it had previously circulated among the parties. This material consisted of a letter from Western Union's Minnesota auditor summarizing the escheatable items from 1963 transactions as shown on the Western Union books, with illustrative samples designed to show the kind of addresses given by persons buying telegraphic money orders. New York refused to consent to the addition of the material to the stipulation and Pennsylvania thereupon offered the material in evidence through the testimony of counsel for Western Union. New York again objected on grounds of irrelevance and immateriality and suggested that the witness lacked knowledge to authenticate the material. The Special Master accepted the evidence, subject to further consideration as to its relevance and the manner of its sub-

mission. To dispose of this matter at once, the Special Master here notes that there is a serious question as to whether the evidence was properly authenticated since the witness had no personal knowledge of the records. It is not necessary to pass on that issue since the information contained does not appear to be in the least helpful in deciding the case and should be rejected as immaterial. The Special Master has not relied upon it in any degree in reaching his conclusions. However, a copy of the material will be lodged with the Clerk of the Court so that if the Court disagrees with the decision of the Special Master in this matter, it may consider the material offered either as an offer of proof or in such other manner as the Court determines.

FINDINGS OF FACT

There is no dispute among the parties as to the underlying facts, though there are some ambiguities which the parties have not resolved. The Special Master makes the following findings:

1. Western Union is a New York corporation, the principal place of business of which is in New York where it maintains its executive offices, keeps its general books of account and holds meetings of its directors and management.

2. Western Union carries on business in each of the States of the United States and specifically has carried on the telegraphic money order business described below in each of the States involved in this case. Its interstate business is regulated by the Federal Communications Commission and its intrastate business is generally regulated by state regulatory commissions.

3. The procedures followed in providing the telegraphic money order service are as follows:

a. A person wishing to send money by wire fills out an application form in a Western Union office. The form contains blanks to be filled in showing the sender's name

and address, the payee's name and address and the amount of money to be sent. The sender gives the completed form together with the principal amount of money to be sent and the handling charges to a clerk at the office of origin.

b. The clerk at the office of origin sends a telegraphic message to the Western Union office nearest the payee's address as shown on the form, which message directs the payment of the amount designated.

c. The office at the point of destination notifies the payee and asks him to call at the office. In some cases the destination address is merely "Will Call" or "Care of Western Union," in which case the money is merely held awaiting the appearance of the payee.

d. If the payee appears at the office within 72 hours of the time of receipt of the message in the paying office and properly identifies himself, he is either paid in cash or given a negotiable money order draft.

e. If, within 72 hours, the payee cannot be located or for any reason fails or refuses to receive the draft or the cash, the telegraphic money order is cancelled by the paying office and the office of origin is notified so that it can refund the principal amount to the sender.

f. The office of origin thereupon attempts to notify the sender and asks him to call at the office. If the office is successful in locating the sender, the principle amount is repaid to him by a negotiable draft.

4. The funds which the States are seeking to escheat or to take into custody, arise in one of four ways:

a. The draft which has been delivered to the payee is never presented for payment.

b. After the order has been cancelled, either because the payee cannot be found or because he fails to accept payment, the attempt to refund the money to the sender also fails because he cannot be located or because he fails to accept the refund.

c. As a variation of the last possibility, the sender may be issued a refund draft which is never presented for payment.

d. Finally there are instances where, through error, either the payee or the sender is paid less than is due him.

5. Western Union has been offering the telegraphic money order service for more than 50 years. The volume of such business now amounts to as much as $10,000,000 a year. Pennsylvania alleges that the unclaimed funds as of December 31, 1962, amounted to $1,500,000 (Pennsylvania Complaint, page 12). This figure is not admitted by the answers of New York (New York Answer, page 2) or Western Union (Western Union Answer, page 3). Florida and Virginia admit the figure for the purposes of the litigation (Florida Answer, page 2; Virginia Answer, page 3). Oregon neither admits nor denies the figure (Oregon Answer, page 2). The stipulation of facts shows that Western Union carries on its books $1,184,000 as a liability reserve on unpaid orders (Stipulation, page 19) which is exclusive of $286,148.27 which has been paid to New York under its abandoned property law (Stipulation, page 19) and $1,160.40 similarly paid to Kentucky (Stipulation, page 19). Since the nature of the relief asked in this proceeding is a declaratory judgment rather than an order for specific payment, the Special Master believes that these figures give a sufficient basis for a judgment. There is no dispute that there are unclaimed funds in very material amounts, probably amounting to between $1,000,000 and $1,500,000.[5]

6. The ledger records maintained by Western Union do not designate any person as creditor nor do they indicate the addresses of either the sender or the payee. They do show the amount involved in each transaction and the loca-

[5]The average amount of the individual money orders is not specified, but in the exhibits attached to this Stipulation they appear to be generally of small size. The vast majority being from $1.00 to $25.00. One can safely assume that the likelihood of undelivered funds remaining unclaimed diminishes as the size of the transaction increases (Exhibit to Stipulation No. 20).

tion of the office of origin and the office of destination. Also, these ledgers do not show whether the person to whom the money was to be paid could not be located or whether a draft issued to him or to the sender was never presented for payment. However, Exhibit 16 to the Stipulation indicates that the application forms with whatever information they contained as to the addresses have been retained in the records as far back as 1930 in some instances and are generally available since 1941 (Exhibit 16 to the Stipulation). The Western Union Comptroller's Office has estimated that the application forms cover 200,000 transactions (Stipulation, page 16) and that it would cost as high as $175,000 to reduce the information available to "reportable form" (Stipulation, page 17).

7. The Stipulation states "In most cases the sender fills in the blanks [in the application form], but in many cases he fails to fill in the space for his address" (Stipulation, pages 4 and 5.) Nowhere in the pleadings or in the Stipulation is there any more specific statement of how frequently this omission occurs, but it must be clear that not all of the unclaimed funds were received in transactions where the addresses were omitted.

DISCUSSION

I. BACKGROUND OF THE CASE

In 1953, Pennsylvania commenced escheat proceedings against Western Union under its law permitting the escheat of property "within or subject to the control of the Commonwealth" if unclaimed for seven years (27 Purdon's Statutes, § 333) for sums of money paid in Western Union offices in Pennsylvania in cases where payment to the designated payees had not been accomplished and where refunds to the senders also failed. Pennsylvania was successful in obtaining a decree from the Pennsylvania Common Pleas Court for $39,857.74, which was affirmed by the Supreme Court of Pennsylvania in *Commonwealth v. Western Union*

Telegraph Co., 400 Penn. 337 (1960). On appeal, this Court reversed that judgment holding that it deprived Western Union of due process since the judgment could not protect Western Union against rival claims of other States. The Court noted that protection could be afforded against such claims in an original suit in this Court, where rival claimants could be made parties. *Western Union Telegraph Co. v. Commonwealth of Pennsylvania*, 368 U.S. 71.

Thereafter, this Court held in *Texas v. New Jersey*, 379 U.S. 674, that the primary right among rival States to escheat intangible property in the form of debts is in the State of the creditor's last known address as shown by the debtor's records. In instances where the records contain no address or in instances where the State where the creditor's address is situated has no law permitting escheat of the property, then the State of the corporate domicile of the debtor may take the property.

II. PENNSYLVANIA'S CLAIM

In this suit, Pennsylvania is seeking in an original action an adjudication on the issue which the Court previously held could not be resolved in the state courts and has named certain rival States as defendants. It relies not only on the escheat law (27 Purdon's Statutes, § 333) but also on the law permitting custodial taking (72 Purdon's Statutes, §1310). The action relates to money orders purchased on or before December 31, 1962, and Pennsylvania in its complaint lays claim to all such funds where the transactions originated in Pennsylvania offices of Western Union. In its reply brief, and again in oral argument, Pennsylvania has receded from its original claim to the extent that it no longer claims amounts where drafts for payment have been issued and where the records of Western Union show some other State as the address of the payee of such drafts. (Penn. reply

brief, pages 10-11; Transcript of oral argument, pages 11-12, 14).[6]

Pennsylvania's claim is based on its interpretation of *Texas v. New Jersey*, 379 U.S. 674, or perhaps, more accurately, a suggested modification of that ruling to meet the requirements of this particular type of transaction. Pennsylvania asserts that the Western Union records do not identify anyone as the creditor and that in many instances addresses are not given for the sender of the money order and sometimes not for the payee. Under these circumstances Pennsylvania argues that a strict application of the *Texas v. New Jersey* rule would result in the escheat of the entire amount to New York, a result which it claims is inconsistent with the purpose of *Texas v. New Jersey*. On the other hand, the originating office is, Pennsylvania claims, presumptively in the same state as the residence of the sender so that to permit the State of origin to escheat would permit the creditor's home State to take in most cases and would result in an equitable distribution of the unclaimed funds.[7]

III. NEW YORK'S POSITION

New York asserts a claim conflicting with that of Pennsylvania and of all the other States (New York Answer, pages 4 and 5). This claim is asserted under the New York Abandoned Property Law, as amended in 1969 and 1970 (2½

[6]Pennsylvania's position is not clear to the Special Master on the disposition of funds where a draft has been issued but where there still is no address in Western Union's records. I do not know whether in that case Pennsylvania would argue that the right to escheat remains in the State of origin of the money order or whether it moves to the State where the draft itself was issued, or possibly even goes to the domiciliary state of Western Union, namely New York.

[7]It is to be noted that the Stipulation in *Western Union v. Pennsylvania* states "in numerous cases the sender or payee is a resident of a state other than the one from or to which the money order is sent." See Transcript of Record, p. 27, in *Western Union v. Pennsylvania*, No. 15, Oct. Term 1961. This statement is not included in the stipulation in this case, but it is obvious that it must be true.

McKinney's Consolidated Laws, §1309). As to money orders issued prior to 1930, New York apparently makes no claim. As to money orders drawn between January 1, 1930, and January 1, 1958, New York claims, as the domiciliary State of Western Union, the right to all unclaimed monies paid to Western Union for telegraphic money orders. As to money orders drawn since January 1, 1958, New York claims the funds under the following circumstances:

a. If the address of the purchaser on the records of Western Union is in New York; or

b. If no address of the purchaser is shown on Western Union records; or

c. If the purchaser's last known address is located in a State not having a statute providing for escheat or custodial taking.

Finally, New York claims the right to such funds "where it is not feasible to determine the identity of the last known address of the creditor from the books of Western Union." This claim presumable covers situations where drafts have been issued, as well as situations where the sender did include his address on his application form, but where the expense of relating the records to the ledger entry is too great to justify the process.

The effect of New York's claims seems to be that it should be entitled to take custodially the entire sum total of these funds in transactions entered into since 1930, since New York relies on the stipulation that the names and addresses of the creditors are not in reportable form (Stipulation, page 16). New York emphasizes that under its statute it is merely taking custody of the items so that, presumably, if a State established addresses for purchasers of particular items arising from transactions since January 1, 1958, New York would surrender those items on proper escheat proceedings by a competing State (New York Brief, page 29).

IV. POSITION OF OTHER STATES

Connecticut (Conn. Brief, page 4), California (Brief and motion, page 1) and Indiana (Motion, pages 1 and 2) support the position taken in the Pennsylvania complaint as does New Jersey in its *brief amicus* (Brief page 5). Oregon (Oregon Answer, paragraph 4) and Virginia (Virginia Brief, page 1) basically support Pennsylvania's position as modified in its reply brief and in oral argument to permit the address of the payee of an unpresented draft to control. Arizona (Arizona Motion, page 2) and Florida (Florida Answer, page 2) claim the funds when the address of the payee of the money order is in Arizona or Florida regardless of the address of the sender. This is asserted to result from their statutes which are modeled on the Uniform Disposition of Unclaimed Property Act approved by the National Conference on Uniform Laws in 1955.[8]

V. ANALYSIS OF RIVAL CLAIMS

In general terms, the parties have suggested three formulas to determine the State having the superior right to take these unclaimed monies now in the hands of Western Union.

(1) The ruling of this Court in *Texas v. New Jersey* should be applied literally so that where Western Union's records show an address for a creditor, the State in which that address falls may take the funds if it has a law providing for such taking; where there is no such address or where the

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[8] Florida apparently bases its argument on the inclusion of the word "payee" in the definition of "owner" in Section 1(f) of the Uniform Act. However, since the same subsection also includes the word "creditor" it does not seem helpful. Arguing on the basis of a different provision of the Act, Section 2(c), American Express argues that the state of issue or sale should be considered presumptively the residence of the creditor both in the case of travelers checks and telegraphic money orders (American Express Brief, *amicus curiae*, p. 22). American Express lists in Exhibit B to its brief *amicus* twelve States which it states has enacted this provision of the Uniform Act.

State has no such statute, the domiciliary State of the debtor may take the funds. This is basically New York's position,[9] though it does not treat *Texas v. United States* as retroactive and therefore claims all funds for orders purchased from 1930 to 1958 regardless of the address of the creditor and it also claims the right to take the unclaimed funds where the address of the creditor is contained in Western Union's records, but the connection of that address with a particular transaction is not "feasible."

(2) The ruling of the Court in *Texas v. New Jersey* should be interpreted, or modified, to select the State where the Western Union office originating the transaction is located. The underlying reason for this suggestion is that under New York's interpretation of *Texas v. New Jersey* all, or nearly all, of the funds would go to New York. The selection of the office of origin as determinative would result in a division of the funds roughly in proportion to the amount of business originating in each State. This solution can be brought within *Texas v. New Jersey* only by treating the office of origin as presumptively the residence of the creditor. With variations, this is the position of Pennsylvania, Connecticut, California, Indiana, Oregon and Virginia.[10]

(3) A third solution would treat the address of the person named as the payee of the money order as determinative on the theory that the payee, not the sender, is to be considered the creditor. This is the position of Florida and Arizona.

An action to escheat property is generally considered an *in rem* proceeding. *Standard Oil Co. v. New Jersey*, 341 U.S. 428. If the item is a tangible object, title or custody

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[9]New York's statute and claim are based on the address of the purchaser of the money order and New York treats the purchaser as the creditor.

[10]This rule would be varied when a draft in payment of a money order, or a draft covering a refund, had been issued but not presented for payment. The address of the payee of the draft or, in the absence of such address, the state where it was issued would govern.

may be taken by a State when it can physically seize it, although due process requires appropriate notice to claimants and opportunity to be heard. See Andrews, *Situs of Intangibles*, 49 Y.L.J. 241. The situs of intangibles assets is more difficult and it appears that courts have come to different conclusions depending on the nature of the proceedings, such as attachment, garnishment, taxation, or escheat, and the nature of the asset itself, such as bonds, bank deposits, insurance policies, fiduciary accounts, or other debts. See Report of the Special Master, Hon. Walter A. Huxman, in *Texas v. New Jersey*, No. 13, Original, pages 23 to 29. See also *Severnoe Securities Co. v. London Lanchashire Ins. Co.*, 255 N.Y. 120, 174 N.W. 229 (1931). And indeed statutes dealing with escheat themselves distinguish between various types of obligation. *See, e.g., Uniform Disposition of Unclaimed Property Act*, Uniform Laws Annotated, volume 9A.

In this case the nature of Western Union's obligation appears to the Special Master to be that of a common debt,[11] not dissimilar to the types of obligations considered by this court in Texas against New Jersey.[12] As to the nature of the proceeding here involved, it may be that a legal distinction can be found between an escheat proceeding, which terminates the claim of former owners, and a proceeding merely to take custody of abandoned property, which will not affect the claim of adverse claimants. See *Standard Oil Co. of New Jersey v. New Jersey*, 341 U.S. 428. It can be

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[11] Connecticut bases its claim, which roughly coincides with that of Pennsylvania, on the theory that the obligation is in the nature of a fiduciary account (Conn. Brief, page 6). The Special Master has difficulty in accepting this analysis, but since Pennsylvania and the other States aligned with it reach the same conclusion on the basis that the relationship is that of debtor and creditor, it does not seem necessary to resolve this difference. Presumably Connecticut was impelled to press its position because of the language of its escheat statute.

[12] The items involved in *Texas v. New Jersey* included unpaid wages, amounts due for goods and services, royalty payments and dividends. See *Texas v. New Jersey*, 379 U.S. 674, 675, f.n. 4.

argued that since in custodial taking only the right to hold and use the money will be shifted from Western Union to a State the interests of the prior owners are not affected. The Special Master cannot accept this argument. Even in the case of mere custodial taking the property interests of the claimants are vitally affected. Possession is a very real element of ownership. Moreover, this is the time, if ever, that they will receive notice and an opportunity to be heard. After a custodial taking, there is no indication that a State will undertake further proceedings and therefore the owners will practically be divested of their interests. The fact that these are small claims and that it cannot be anticipated that claimants will in any material number of cases assert their claims does not affect the legal situation. Therefore, it is the Special Master's conclusion that the same formula should be followed for escheat and custodial taking.

In determining whether a departure from the formula set forth in *Texas v. New Jersey* is justified, the first step is to examine how an application of the formula to this factual situation would work in practice. Presumably a State seeking escheat has the burden of establishing the facts basic to its authority. Thus, in order for New York to take as the domiciliary state of the debtor, it would have to establish as to all escheatable items the absence from Western Union's records of an address for the creditor. It would not suffice under the ruling of *Texas v. New Jersey* to establish that it would be difficult or expensive to search the records for this information. The apparent agreement of all the parties that the ascertainment of the addresses is not "feasible" is probably based on the fact that Western Union's ledgers do not give the necessary information and that a search of 200,000 transactions with 300,000 ledger entries would be necessary at a cost of $175,000.00 (Stipulation, page 16).[13]

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[13]The Special Master makes no suggestion as to whether the cost of such a search must be borne by the State undertaking to escheat the unclaimed funds, or whether the cost can be imposed on Western Union under some sort of reporting requirement.

It is not possible from the stipulated facts to form a judgment as to what number of items said to have no creditors' addresses in the records are so listed because of the failure of the sender to include his address on the application form and how many are so listed because it is difficult from the records to associate an item with the underlying papers.

The Pennsylvania argument that the situation in this case varies fundamentally from that covered by Texas against New Jersey seems to have two bases.

First, Pennsylvania appears to argue that not only must the records show addresses of the parties to the transaction but they must identify one of the parties as the creditor. There is no question that Western Union's records are in terms of the "sender" and "sendee" of the order. When drafts had been issued, the records do not identify a "payee" or refer to him as a "creditor." Western Union and New York both analyze the contract as making the sender the creditor for money which cannot be refunded when the "sendee" cannot be found within the 72-hour limit and the contract has been cancelled. They consider the sendee as the creditor when a draft has been issued but not cashed. The Special Master agrees that this analysis is correct. Moreover, the Special Master does not read the ruling of this court in Texas against New Jersey as requiring such an identification in the records. If the records show an address which a State can establish as the address of a creditor, that should meet the test.

The second objection of Pennsylvania seems to be bottomed on the argument that when the Supreme Court referred to the records of the debtor, it meant formal ledgers or books of account and excluded such documents as the applications for money orders which are here involved. This is nowhere explicitly stated, but it can be deduced from Pennsylvania's failure to take into account the instances where the addresses of the parties are filled in on the application. Whether that be the interpretation of Pennsylvania or not, it is not acceptable to the Special Master. It is clear

that the applications have been retained by Western Union and are available for study and analysis. The Special Master finds that these applications are part of the records of Western Union within the meaning of *Texas v. New Jersey*. Otherwise the power to determine between the rival claimants for unclaimed monies would be delegated to the debtor which could enter the addresses upon its ledgers or not and thus affect the rights of the claimants.

As stated above, the underlying reasoning behind Pennsylvania's argument is that it would result in a more equitable distribution of the unclaimed funds. The principle difficulty with this solution is that it gives rise to a serious question as to the legality of cutting off or impairing an individual's property rights by an *in rem* proceeding in the state of origin. This is stretching the reasoning of *Texas v. New Jersey* to a perhaps unreasonable limit. We start from the proposition that the domicile of the creditor is a reasonable place to seize an intangible debt on the basis of the rule "mobilia sequntur personam." *Blodgett v. Silberman*, 277 U.S. 1, 9-10. In *Texas v. New Jersey* this rule was applied to permit the domicile of the creditor to be determined by the last known address as it appeared on the creditor's books. The court recognized that in some instances there might be variances between the company records and the actual address of the creditors but accepted the record addresses neverthless since "any errors thus created . . . probably will tend to large extent, to cancel each other out." However, the Pennsylvania formula would rely on a factor which does not even purport to be an address of the creditor, but merely an office where he was physically present to buy a money order. Frequently, perhaps usually, this office and his domicile will coincide, but it is clear that money orders must frequently be bought away from home. Consider, for example, the number of New Jersey and Connecticut residents who must buy telegraphic money orders in New York City or the number of Virginia and Maryland residents who must buy money orders in the District of Columbia. The Court's opinion in Texas against New Jersey specifically

disclaims that its determination was based upon constitutional requirements. However, I do not conceive that this means that the holding of *Pennoyer v. Neff*, 95 U.S. 714, and its progeny is entirely abandoned and that the rights of owners of intangible property may have their property rights cut off or adversely affected by state action in an *in rem* proceeding in a forum having no continuing relationship to any of the parties to the proceedings. Rather, I assume that the court meant that in choosing among the theories presented in that case, there were no constitutional restrictions which dictated which of those theories could be accepted. The rivals there were Texas, where most of the transactions occurred and where the funds to pay the debts were held; the State of domicile of the debtor, that is, New Jersey; the principal place of business of the debtor, that is Pennsylvania; and the State of residence of the creditors as evidenced by their addresses on the debtor's books. Since the Court noted that it was under no constitutional compulsion to elect between these States, it can be assumed that insofar as constitutional power to take the property be escheat is concerned, it existed in any one of these jurisdictions.

However, it goes far beyond the holding in *Texas v. New Jersey* to assume such constitutional power merely because the office of origin is in a particular jurisdiction when there is no other indication of the address of the parties. All that this shows is that the sender had been in that jurisdiction, perhaps only for an hour, perhaps for a day. Even though a stated address may not be a fool proof determination of residence it does constitute a conscious selection of a State by a party to the transaction whereas the office of origin might be only a matter of chance or convenience. Therefore, I cannot find in *Texas v. New Jersey* any real support for the constitutionality of a taking under the formula proposed by Pennsylvania.[14]

[14]Pennsylvania alleges in a Supplemental Memorandum at pages 1 and 2 that the issue of constitutionality is not involved in the present proceeding. The Special Master believes that the validity of the tak-

Even greater doubt exists with respect to Florida's proposal that the Western Union office where the order is to be paid should govern. When a draft has been issued to a payee, but not cashed, his address would certainly be an appropriate place to fix the right of escheat. But where the order has been cancelled under its terms because the payee has not appeared or accepted the funds, then the payee seems to have no further interest in their disposition while the sender has a contract right to a refund. To cut off this right by an *in rem* proceeding in the state of destination is even more difficult constitutionally than is Pennsylvania's suggestion.

These doubts as to the constitutionality of the alternative formulas for escheat support the conclusion that the simple and workable formula established by the court in *Texas v. New Jersey* should be followed with respect to telegraphic money orders which are here involved. As in the case of the obligations in that case, this rule presents an easily administered standard preventing multiple claims and giving all parties a fixed rule on which they can rely.

CONCLUSION

I accordingly conclude that the Court's formula set forth in *Texas v. New Jersey* for the escheat or custodial taking of intangible claims such as ordinary debts should be applied to unpaid telegraphic money orders. Any sum now held by Western Union unclaimed for the period of time prescribed by the applicable State statutes may be escheated or taken into custody by the State in which the records of Western Union placed the address of the creditor, whether that creditor be the payee of an unpaid draft, the sender of a money order entitled to a refund, or an individual whose claim has been underpaid through error. Still following the

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ing from the viewpoint of the former owners must be a factor in choosing among possible takers.

formula of *Texas v. New Jersey*, if no address is contained in the records of Western Union, or if the State in which the address of the creditor falls has no applicable escheat law, then the right to escheat or take custody shall be in the domiciliary State of the debtor, in this case, New York.

New York's claim that this formula should not be applied to escheats the time period for which expired prior to the date of this Court's judgment in *Texas v. New Jersey* is supported neither by argument nor reason. The Special Master recommends that the formula be applied to all the items involved in this case regardless of the date of the transactions out of which they arose.

Each of the States which is a party hereto, including intervenors, should bear in equal parts the costs of this suit, including the expenses of the Special Master and compensation to him to be fixed by the court. The defendant, Western Union Telegraph Company, should not bear any part of the costs.

RECOMMENDED DECREE

In accord with my findings and conclusions, I recommend the entry of a decree in the following form:

It is now Ordered, Adjudged, and Decreed as follows:

Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant, Western Union Telegraph Co., is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant, Western Union Telegraph Company, to the extent of that State's power under its own laws, to escheat or take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Western Union Telegraph Company is subject to escheat of custodial taking only by New York, the State in which Western Union

Co. was incorporated to the extent of New York's power under its own laws to escheat or take custodially, subject to the right of any other State to recover such property from New York upon proof that the last known address of the creditor was within that other State's borders.

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Western Union Telegraph Company is in a State the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New York the State in which Western Union Telegraph Company was incorporated, to the extent of New York's power under its own laws to escheat or to take custodially, subject to the right of the State of the last known address to recover the property from New York if and when the law of the State of the last known address makes provisions for escheat or custodial taking of such property.

Respectfully submitted,

JOHN F. DAVIS
Special Master

November, 1971

JAN 18 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff,

and

STATE OF CONNECTICUT,
Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,
Defendants.

EXCEPTIONS OF INTERVENOR-PLAINTIFF STATE OF CONNECTICUT TO REPORT OF SPECIAL MASTER

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EXCEPTIONS OF INTERVENOR-PLAINTIFF STATE OF CONNECTICUT TO REPORT OF SPECIAL MASTER

The Intervenor-Plaintiff State of Connecticut excepts to the report of the Special Master in several respects.

The Special Master has injected a constitutional issue into this case where none exists. As stated in our brief at page 4, the only question presented in this case is which of the various states is entitled to custody of the escheatable moneys held by Western Union. The rights of persons having an interest in the moneys are not in issue. Regardless of which position this Court adopts, the rights of individuals will not be affected. Whether the state of origin of the money order, the state of destination of the money order, or the state of domicile of Western Union is allowed by

this Court to take custody of the moneys, persons having an interest in said moneys may file claims in accordance with statutory procedures in effect in the custodial state. We, therefore, submit that the rationale of *Penoyer* v. *Neff*, 95 U.S. 714, was erroneously considered and applied by the Special Master in the instant case.

Further, since the issue in this case is not controlled by constitutional or statutory provisions, this Court should follow its intention articulated in *Texas* v. *New Jersey*, 379 U.S. 674, 681, "to distribute escheats among the States in proportion of the commercial activities of their residents." Certainly, adopting the proposition that the state of origin of the money order should take custody of the moneys would carry out the announced intention of this Court while the conclusion of the Special Master that the state of domicile of Western Union should take custody would completely frustrate that intent.

The Special Master noted that the senders of some money orders were not residents of the states in which those money orders originated and therefore concluded that the state of origin formula should not be adopted. We concede the statement of the Special Master, but we submit the percentage of such non-resident senders is extremely low in comparison to the overall total of senders and should not be made the basis for dismissing the proposal that the state of origin take custody of such moneys. As this Court stated in the *Texas* case at page 681:

> "It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out."

While we also recognize the validity of the Special Master's argument that the Pennsylvania formula is based on a rebuttable presumption of residence in the state of the sender, we submit that that technical aspect of the formula is far outweighed by the end result which would be the equitable distribution of unclaimed funds among the several states.

CONCLUSION

For all of the above reasons as well as those advanced in its brief filed with the Special Master, the Intervenor-Plaintiff State of Connecticut respectfully submits that this Court reject the Report of John F. Davis, Special Master and adopt the formula urged by the State of Pennsylvania and concurred in by the States of Connecticut, California and Indiana.

Respectfully submitted,

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January 11, 1972

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In the Supreme Court of the United States

October Term, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff

and

STATES OF CONNECTICUT, CALIFORNIA and INDIANA,
Intervening Plaintiffs

v.

STATES OF NEW YORK, FLORIDA, OREGON and VIRGINIA, and THE WESTERN UNION TELEGRAPH COMPANY,
Defendants

and the

STATE OF ARIZONA,
Intervening Defendant

EXCEPTIONS OF PLAINTIFF, COMMONWEALTH OF PENNSYLVANIA, TO REPORT OF SPECIAL MASTER

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SUMMARY OF ARGUMENT

The Special Master's Report asserts, as a Conclusion to his Findings of Fact and Discussion, that "the Court's formula set forth in *Texas v. New Jersey* (379 U.S. 674) for the escheat or custodial taking of intangible claims such as ordinary debts should be applied to unpaid telegraphic money orders".

The rule for ordinary debts cannot be assimilated to the unclaimed amounts of telegraphic money orders. The company does not keep records of the last known address of the persons entitled to the money except to the extent that the telegraphic money order form provides a place for the purchaser's insertion of his address therein. The company does not require the purchaser to fill in his address, and in many cases the purchaser fails to do so.

In a money order transaction, Western Union receives a deposit in an office in the State where the money order is purchased, and assumes a duty to deliver a like amount elsewhere. If it cannot make delivery within 72 hours, the office in which it receives the money is directed to refund to the sender (purchaser) of the money order the amount he deposited there. No other state than the state of deposit and refund figures in the transaction where the money order is not carried out.

Texas v. New Jersey was an exercise by the Supreme Court of its constitutional power to determine

controversies between States. In the exercise of that power, the Court was guided by considerations of fairness and equity among the States, and the rules there declared were so declared to accomplish the desired fairness and equity. In the present case only one State is involved under the money order transaction, the State of origin, which is also the State of refund. It is the only State giving the benefit of its economy and laws to the deposit and refund. To apply here the no address rule of *Texas v. New Jersey* without considering the purpose of the Court in that case to accomplish fairness and equity among the States, would be to defeat such purpose here.

The rule required by the money order transaction where payment has not been effected nor refund made is that the State of origin of telegraphic money orders is the State entitled to the escheat or custody of unclaimed amounts of money orders, to the extent of that State's power under its own laws to escheat or take custody; if it cannot be determined from the books and records of the company which State is the State of origin, then the State of Western Union's domicile is entitled to the escheat or custody of the said intangibles, to the extent of that State's power under its own laws to escheat or take custody.

Pennoyer v. Neff, 95 U.S. 714, cited by the Special Master, is not involved in the present proceeding, the purpose of which is to determine which State has the primary right of escheat or custody of the unclaimed amounts of telegraphic money orders. No matter which State is held to have such primary right, it will be required, in proceedings exercising

such right, to meet whatever requirements of *Pennoyer v. Neff* "and its progeny" are applicable to such proceedings. It is premature in the present action to consider what procedural requirements are imposed by *Pennoyer v. Neff*.

ARGUMENT

The Special Master has concluded that the no address formula set forth in *Texas v. New Jersey,* 379 U.S. 674, for the escheat or taking of intangible claims such as ordinary debts, should be applied to unpaid telegraphic money orders.

A reading of the opinion in *Texas v. New Jersey* indicates that the no address rule in that case should not be applied here.

In *Texas v. New Jersey,* the Court was guided by the aim of fairness and equity among the States, and it was felt that fairness and equity would be accomplished by the no address rule suggested by the Master in that case, because under th facts in that case, such rule would tend to distribute escheats among the States in the proportion of the commercial activities of their residents. It must be believed that if the Court had felt that under the facts in that case, the no address rule would not have tended to distribute escheats among the States in the proportion of the commercial activities of their residents, and had not met the aim of fairness and equity among the States, the said rule would not have been adopted.

In the present case, the company never makes entries on its records showing the address of the sender. The only place where the address of the sender may appear is on the money order application if the sender fills in the blank provided for such informa-

tion, and the record shows that in many cases the sender does not fill in such blank. To hold that the no address rule of *Texas v. New Jersey* applies where the sender has not filled in this blank would be to give the moneys to New York, the State of Western Union's domicile. But, as said in *Texas v. New Jersey,* "in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor (domicile of the obligor), to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself."

In *Texas v. New Jersey,* the Court favored the rule which it adopted because by that rule "administration and application of escheat laws should be simplified". In the present case, the application of the no address rule, by itself, would require an examination of every money order application, one by one, to determine whether the sender has filled in the blank for his address. According to Western Union estimates, as set forth in the Stipulation, it would cost as much as $175,000.00 to make such examination and reduce the information obtained to reportable form. The total of the amounts involved in the present case is between $1,000,000.00 and $1,500,000.00.

It is unlikely that any one State would be entitled to escheat more than 10% of such total of $1,000,000.00 or $1,500,000.00, and if a State seeking the escheat or custody of the amount to which it might be entitled were compelled to expend such amount of $175,000.00 to recover an equivalent amount or less,

this would be a deterrent to every State, except perhaps the State of Western Union's domicile. The result might be that the money would remain in the hands of Western Union, as has been the case until the present time.

Western Union does not seek to retain the fund, and has said in its brief filed with the Master that it would not oppose Pennsylvania's proposal, which "appears to be fair, equitable and feasible. Its adoption would strongly promote ease of administration and would be well calculated to avoid onerous record keeping and new burdens upon commerce in telegraphic and 'express' money transfers".

The rule which Pennsylvania proposes is that the State of origin of a telegraphic money order be held to be the State entitled to the escheat or custody of the unclaimed amounts of such money orders. The ledger records maintained by the company show the location of the office of origin in each case, and there would be no necessity of examining any telegraphic money order to obtain this information.

The adoption of the rule suggested by Pennsylvania does not mean a special rule for this one case. There are many situations in which the obligor does not keep records of the addresses of its creditors or obligees. Money orders sold over the counter, not only by Western Union, but also by American Express and other organizations, are sold without any record whatsoever of addresses of the purchaser or the person to whom the money order is sent. (See brief amicus curiae of American Express Company). As to such express money orders sold over the coun-

ter "the only information retained by the company on such money orders is the serial number, date and *place of sale* and amount". (Stipulation, par. 56 note 10) (Emphasis ours.)

Other familiar situations in which no information is obtained by the obligor as to identity or address of the "creditor" are the familiar "gift certificates", "trading stamps", "tokens" and "tickets" issued by transportation companies. These are but a few of the various kinds of transactions in which no record of the identity or address of the "creditor" is obtained or maintained by the obligor, and which, by reason of the ambulatory habits and nature of American life and business, frequently extend or cross over State lines.

Just as it was necessary in *Texas v. New Jersey,* in the interest of fairness and equity among the States, that rules be adopted to settle which State is allowed to escheat or take custody of intangibles of the kinds as to which the identity of the creditor and his address might be ascertained from the books and records of the debtor, where it kept such records, so also, it is necessary that a rule or rules be adopted to settle which State shall be allowed to escheat or take custody of amounts due on intangibles arising from transactions of the kinds in which the debtor does not maintain such records.

It is, therefore, submitted that the following rule be adopted:

> "The state of origin of a telegraphic money order, as shown by the company's records, is the

only State entitled to escheat or custody of unclaimed moneys arising from the money orders to the extent of that State's power under its own laws to escheat or to take custodially."

Or, that a more general rule be adopted reading as follows:

"Where a transaction is of the type as to which the obligor does not make entries upon its books and records showing the address of the obligee, the State of origin of the transaction, as shown by the books and records of the obligor, is the only State entitled to the escheat or custody of the intangible arising from such transaction, to the extent of that State's power under its own laws to escheat or take custodially; or

"Where the state of origin of the transaction is not shown on the obligor's books and records, the State of the obligor's incorporation is the State entitled to the escheat or custody of the intangible, to the extent of that State's power under its own laws to escheat or take custodially."

The Special Master has referred to *Pennoyer v. Neff*, 95 U.S. 714, as imposing certain procedural requirements upon the escheating State. Such procedural requirements must be met when an escheat or custodial action is instituted, but it is submitted that such matters have been prematurely considered in the present case by the Special Master.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA, *Plaintiff*,

and

STATES OF CONNECTICUT, CALIFORNIA, AND INDIANA,
Intervening-Plaintiffs,

vs.

STATE OF NEW YORK, ET AL., *Defendants*.

EXCEPTIONS OF INTERVENING PLAINTIFF STATE OF INDIANA TO REPORT OF SPECIAL MASTER

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STATE OF NEW YORK, ET AL., *Defendants*.

EXCEPTIONS OF INTERVENING PLAINTIFF STATE OF INDIANA TO REPORT OF SPECIAL MASTER

I

Typographical Errors

The second paragraph in the Special Master's Recommended Decree reads as follows:

> "2. Each item of property in question in this case as to which there is no address of the person en-

> titled thereto shown on the books and records of defendant Western Union Telegraph Company is subject to escheat *of* custodial taking only by New York, the State in which Western Union Co. was incorporated to the extent of New York's power under its own laws to escheat or take custodially, subject to the right of any other State to recover such property from New York upon proof that the last known address of the creditor was within that other State's borders." (Emphasis added)

From a grammatical point of view, the emphasized word "*of*" is a typographical error. We call the Court's attention to the first paragraph of the Recommended Decree which reads as follows:

> "Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant, Western Union Telegraph Co., is subject to *escheat or custodial taking* only by the State of that last known address, as shown on the books and records of defendant, Western Union Telegraph Company, to the extent of that State's power under its own laws, to escheat or take custodially." (Emphasis added)

There is no reason for the Special Master to use a different phrase in the second paragraph then he did in the first paragraph of his Recommended Decree, especially when he specifically stated that in the formula for distribution of funds in question the same formula should be followed for both escheat and custodial taking. See page 16 of Report of John Davis, Special Master. The third paragraph of the Recommended Decree reads as follows:

> "3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records

> of defendant Western Union Telegraph Company is in a State the laws of which do not provide for the *escheat* of such property, is subject to escheat or custodial taking only by New York the State in which Western Union Telegraph Company was incorporated, to the extent of New York's power under its own laws to escheat or to take custodially, subject to the right of the State of the last known address to recover the property from New York if and when the law of the State of the last known address makes provisions for escheat or custodial taking of such property." (Emphasis added)

From reading this paragraph as a whole and from the Master's conclusion that the same distribution formula should apply in both states of escheat or custodial taking the phrase "or custodial taking" should be inserted right after the word "*escheat*" as emphasized above.

II

The Special Master Has Misinterpreted the Case of Texas v. New Jersey in Giving to New York a Windfall in Unclaimed Money Orders Where the Last Known Address of the Sender Is Not Shown on the Books and Records of the Western Union Telegraph Company but Where the State of Origin Is Shown in Its Records

In looking at the second paragraph of the Master's Recommended Decree it is respectfully submitted that he has misinterpreted *Texas v. New Jersey*, 379 U.S. 674 (1965). At the end of its opinion in that case the Court stated as follows:

> "We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past

> decisions, nor is it entirely one of logic. It is fundamentally a question of *ease of administration and equity*. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States." (Emphasis added) 379 U.S. 674 at 683.

It is respectfully submitted that the Special Master, in his Recommended Decree, applied the solution reached in the specific *Texas v. New Jersey, supra,* fact situation, and he did not give proper consideration to the rationale as set forth in the foregoing quotation. The result is a Recommend Decree which is neither equitable nor easy to administer.

The inequities of the Special Master's proposed decree. The Special Master's proposed Decree is inequitable in that it provides a windfall for the State of New York based upon the historical accident of being the state where the defendant Western Union Telegraph Company is incorporated, notwithstanding the fact that it does business all over the United States. The Court in *Texas v. New Jersey, supra,* disapproves of minor factors playing a major part in the resolution of disputes of this nature. Under the circumstances of this case if this Court will allow New York to escheat or custodially take those funds as to which, on the books and records of the defendant Western Union, there is no last known address of the person entitled thereto without properly taking into consideration the location where the money order originated, this Court would be allowing a minor factor to play a major determinative role in the resolution of this conflict. It should be brought to the attention of the Court that in the *Texas v. New Jersey, supra,* fact situation, the intangibles in question were, for the most part, uncashed checks or other intangibles paid on various and sundry types of accounts, and when the last known

address of the creditor was not shown on the books and records of the debtor or holder, a universally common factor analogous to the state of origin of the money orders in question in the case at bar did not exist.

As reason for his Recommended Decree, the Special Master stated that it cannot be presumed that the sender resided in the state where the telegram originated. As a factual matter this may be true in some instances. However, it is apparent that the errors inherent in the presumption that the state of origin of the money order is the state of residence of the sender would cancel each other out. The principle based upon this assumption was applied in *Texas v. New Jersey, supra,* when the Court considered the possibility that the last known address of the creditors or persons entitled to the unclaimed intangibles, as shown on the books and records of the corporation, may not always be their last known addresses at a later time. We respectfully submit that if the errors balanced themselves out in the *Texas v. New Jersey, supra,* situation, they would also balance themselves out under the circumstances in the case at bar. It is respectfully submitted that the application of the principle of balancing errors would provide a more equitable distribution of the funds in question than would the rejection of this principle as reflected by the Special Master in the second paragraph of his Recommended Decree.

It should also be brought to the attention of the Court that by virtue of the application of Paragraph 3 of the Special Master's Recommended Decree, there are, as shown in Exhibit 26 of the Stipulation of Facts in this case, nineteen states which, generally speaking, do not have statutes related to unclaimed telegraphic money orders. If the recommended decree of the Special Master is adopted as it stands, New York would be receiving the proceeds of not

only unclaimed telegraphic money orders originating in those states as listed in Exhibit 26 of the Stipulation of Facts but also from states with statutes which provide for escheat or custodial taking of unclaimed telegraphic money orders but which cannot come forward to prove that the individuals entitled to the funds were its residents.

The Special Master's proposal is difficult to administer. The Special Master's proposed Decree, if adopted by this Court, would lend itself to further litigation. As to those telegraphic money orders for which there is no last known address of the sender upon the books or records of the corporation, litigation is sure to arise on the issue of the state of residency of the sender at the time that the money order was sent. This is contrary to the spirit of *Texas v. New Jersey, supra.*

CONCLUSION

For the foregoing reasons the proposed Decree of the Special Master should be rejected and a decree adopting the principles stated herein should be adopted by this Court.

Respectfully submitted,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATE OF CONNECTICUT,

Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,

Defendants.

EXCEPTIONS OF DEFENDANT STATE OF FLORIDA TO REPORT OF SPECIAL MASTER

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STATE OF NEW YORK, ET AL,

Defendants.

EXCEPTIONS OF DEFENDANT STATE OF FLORIDA TO REPORT OF SPECIAL MASTER

The Defendant State of Florida excepts to the report of the Special Master on the following grounds:

(1) The Special Master has concluded that the issue in this case is controlled by constitutional considerations, contrary to the decision of this

Court in Texas v. New Jersey that "the issue here is not controlled by. . .constitutional provisions or by past decisions. . . ." 379 U.S. 674, 683.

(2) The Special Master has improperly concluded that a custodial taking by the state shown on the debtor's records as the place for payment or purchase would unlawfully impair the individual creditor's property rights, when such a taking protects those rights more fully than any of the alternative claims asserted in this case.

(3) In concluding that the custodial claim to unclaimed money order funds by the state of original destination or payment is cut off by the sender's contract right to refund, the Special Master overlooks the fact that the only funds involved in this proceeding are those which have not or cannot be refunded and which became and remained unclaimed from the time the obligation to the original payee accrued.

(4) In concluding that the place designated on debtor's records for payment of money order funds does not constitute a creditor's address according to the debtor's books, within the rule of Texas v. New Jersey, supra, the Special Master has construed that decision to require a technically complete address supplied by the creditor to establish a factual foundation for a finding of legal residence, when the decision instead is based on a rule of equity and expedience and a presumption of residence which in the absence of contrary evidence is adequately supported by a debtor's record of the address at which payment is to be made to a creditor.

For these reasons, as well as those more fully stated in brief filed by the Defendant State of Florida before the Special Master, the Court is urged to reject the report filed herein and adopt the rule of distribution set out in defendant's brief.

Respectfully submitted,

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PROOF OF SERVICE

I, Winifred L. Wentworth, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendants, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 26th day of January, 1972, I served copies of the foregoing Exceptions of Defendant State of Florida to Report of Special Master, on each of the parties by depositing such copies in a United States Post Office, addressed as follows:

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